IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

Crl.Rev.Pet.No. 254 of 2000()

CRA.159/1996 of II ADDL.SESSIONS COURT, KOLLAM
CC.111/1995 of JUDL.MAGISTRATE OF FIRST CLASS-III, PUNALUR

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REVN. PETITIONER: APPELLANT/ACCUSED

A.AHAMMED KUNJU
S/O.ALIKUNJU
CHIRAYIL VEEDU, AVANEESWARAM
KUNNICODE, KOLLAM DISTRICT.

BY ADV. SRI.S.ABDUL RAZZAK

RESPONDENTS: 1ST RESPONDENT/COMPLAINANT & STATE

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1. V.SUSEELKUMAR
   SARASWATHY BHAVAN
   THOHLIKKODE
   PUNALUR, KOLLAM DISTRICT.

2. STATE OF KERALA
   REPRESENTED BY THE PUBLIC PROSECUTOR
   ADVOCATE GENERAL'S OFFICE
   HIGH COURT BUILDINGS, ERNAKULAM.

BY ADV. SRI.SUBHASH CYRIAC
BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRRP254/2000

ORDER ON CRL.M.P.NO.1570/2000 IN CRL.R.P.NO.254/2000

DISMISSED

7.9.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

Crl.R.P.No.254 of 2000

Dated this the 7th day of September, 2007

O R D E R

The revision petitioner is the accused who stands convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo S.I. for three months and to pay a fine of Rs.50,000/- and in default, to undergo simple imprisonment for one month.

2. The case of the complainant is that the accused had received a sum of Rs.1,00,000/- from the complainant agreeing to arrange employment in Kerala Electricals & Allied Industries, Kundara and that he failed to provide such employment and in discharge of the liability he issued a cheque dated 30.10.1994 which when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent demanding the amount was willfully got received.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 and 2 and Exts. P1 to P7. The defence got examined DWs' 1 and 2.

4. PW1 is the complainant and PW2 is the bank Manager. The execution of the cheque stands proved from the evidence of PW1 and the dishonour for want of funds in the account of the accused from the evidence of PW2. DW2 is the father of the complainant. DW1 is the witness examined in support of the version of the accused that the blank cheque was issued by the accused to DW2, the father of the complainant in January, 1994 while DW2 was the Regional Transport Officer as commission for a vehicle transaction. DW2, the father of the complainant examined at the instance of the defence has flatly denied the above allegation. DW2 has also stated that he was working as Regional Transport Officer, Kollam only from May 1994 vide G.O.(Rt.) 893/94 dated 26.4.1994. Both the courts have concurrently found that the testimony of PW1 and DW1 as to the execution of the cheque stands established. The statutory presumptions could not be dislodged by the evidence of DW1. In the circumstances, I find no reason to deviate from the concurrent findings of the courts below as to the execution of the cheque and the conviction. The conviction is confirmed.

5. The trial court had imposed simple imprisonment for three months and to pay a fine of Rs.1,25,000/- is ordered to be paid to the complainant. Strangely, the appellate court modified the sentence and reduced the fine amount to Rs.50,000/-. I find that there is no justification for the above reduction. In the circumstances, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.1,20,000/- to the complainant and in default, to undergo simple imprisonment for three months. The revision petitioner/accused is granted six months' time to remit the amount of compensation. He shall appear before the Judicial First Class Magistrate Court-III, Punalur on 12.3.2008 to receive the sentence.

The criminal revision petition is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

csl